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CHARLES ELMORE CROPL
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United States of America

In the

Supreme Court of the United States

No. 669

THE FRATERNAL ORDER OF POLICE, a corporation not not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,

Plaintiffs and Petitioners,

v.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,

Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

EDWARD N. BARNARD,
Attorney for Plaintiffs and Petitioners,
906 Dime Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., Cass Bldg., 457 Port St. W., Detroit

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PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

Petitioners, by Edward N. Barnard, their attorney, respectfully show the court as follows:

I. That Edward N. Barnard is an attorney at law, qualified to practice that profession under the laws of the

State of Michigan, and maintains offices at 906 Dime Building, Detroit, Wayne County, Michigan, and that he is counsel for the Fraternal Order of Police, a corporation not for profit organized and existing under the laws of the State of Michigan, also Joseph Johnson Lodge, No. 102 of the City of Lansing, Michigan, a subordinate lodge of the Fraternal Order of Police, plaintiffs below and petitioners here, and files this petition in their behalf, and has authority so to do.

II. For a summary and short statement of the matter involved, petitioners show the court:

1. Petitioners filed a bill of complaint (R. 5-13) on the Chancery side of the Circuit Court for the County of Ingham, State of Michigan, on November 26, 1941. This bill alleges that Fraternal Order of Police is a non-profit corporation, organized April 23, 1939, for the purpose of promoting better fellowship among the members of the Police Department, to encourage education and investigation in matters pertaining to police work, for the mutual protection and relief of employees of Police Department who become members and their families and relatives exclusively. Its objects and purposes are further stated, according to the bill of complaint, in the preamble to its Constitution as follows:

> "We, the members of the various Police Departments of this State (meaning the State of Michigan) convinced that it is to the best interests of our members, hereby unite under the name of the Fraternal Order of Police of Michigan, and believing that intelligence, industry and normal work are the true standards of greatness, do hereby pledge ourselves to use all honorable means to promote sociability and fraternity among the members of this Order."

The bill alleges that the organization is strictly non-political, non-sectarian, and cannot be affiliated with any labor or political action organization. Among its activities are the prevention of crime, and the carrying on of social and charitable work in collaboration with the larger established fraternal and civic organizations, in the alleviation of economic distress among the underprivileged groups of the community in which local lodges are established and maintained. The bill goes on to state that plaintiffs Joseph Johnson Lodge No. 102 is a subordinate lodge of the Fraternal Order of Police, established June 3, 1941, with membership composed of the Lansing policemen and the law enforcement officers of Ingham County and its subdivision, and that there have been twelve other local chapters of Fraternal Order of Police organized in Michigan in 24 municipalities.

The bill charges that defendants are members of the Lansing City Police and Fire Commission under the terms of the Charter of that City and has jurisdiction over the Police Department, and did on August 13, 1941, adopt the following resolution:

> "No superior officer of the Lansing Police Department shall be a member of the Fraternal Order of Police; further the Lansing Lodge shall confine its members to the Lansing Police Department and shall have no associate or honorary members."

A subsequent hearing on October 14, 1941, was had concerning this resolution, attended by representatives of plaintiff, and defendants refused to rescind this resolution. The bill further alleges that defendants threaten that any persons who disobey such order will be called before said commission and are subject to dismissal or other action that said commission may see fit to take in the form of punishment, and prays as follows:

"* * * that the defendants may be compelled to aswer this Bill of Complaint but not on oath, their oath be hereby specifically waived. Plaintiffs further pray that this court issue a temporary order of injunction restraining the defendants and each of them from using any means whatsoever to compel the plaintiffs and other members of the Police Department of said City to resign or withdraw their membership in said The Fraternal Order of Police and its said subordinate lodge; restraining and enjoining the defendants from threatening, intimidating, coercing or otherwise interfering with the plaintiffs and or any other member of the Police Department of said city who has joined, desires to join, or who joins in the future the said Fraternal organization and lodge; enjoining said defendants from dismissing or harassing any member of the said Police Department because of his membership in said The Fraternal Order of Police, or its said subordinate lodge, or because of his application to join the same; also enjoining the defendants from penalizing, punishing or injuring in any manner the plaintiffs or any other member of the Police Department who has heretofore or who hereafter joins said organizations; and that upon final hearing, a Decree may be entered herein making said injunction permanent and for all other legal and equitable relief to which plaintiffs may be entitled."

2. An order to show cause (R. 14-15) why the injunction as prayed should not issue came on for hearing in the said Circuit Court on December 18, 1941, when by consent of counsel, the cause proceeded to hearing on the merits (R. 27). It was shown by proofs on behalf of plaintiffs that the Fraternal Order of Police is a national organization and that its purposes are set forth in its Constitution and By-laws, which were admitted into evidence (R. 33). It is a Fraternal Order established under a National

Charter in Pittsburgh and under a State Charter in Michigan (R. 27-28). Its membership is composed of all regularly employed law enforcement officers, including State, County, Municipal and National, such as F. B. I. (R. 34). Plaintiff, Joseph Johnson Lodge, is subordinate to the State Lodge, and is located in Lansing (R. 28). The subordinate lodges have associate members composed of public-spirited citizens who wish to cooperate with the police (R. 28-29). The Order functions in many ways, such as to combat child delinquency and also has charitable activities (R. 28-29). A witness related a circumstance whereby the Grand Rapids, Michigan lodge found in a certain area of that city inhabited by colored persons that there was an annual record of a large number of arrests of children for juvenile delinquency, amounting to more than 225 (R. 99). The local lodge, in conjunction with associate members, and the chief of police who was a member, set up a "Young Commonwealth." The officers devoted their time and labor and a building was erected, with a playground. There was equipment for both girls and boys. A partially disabled police officer was put in charge. In one year the arrests for juvenile delinquency in this area was cut down to three (R. 29-30). Other instances were related in reference to Jackson, Michigan (R. 30) and in Cleveland, Ohio (R. 31).

Associate members become such on application recommended by three regular members, and upon vote of the whole lodge (R. 34-35). An associate member may carry insignia, two or three inches in size, on the license plate of his car, showing that he is such (R. 35-36). He also has a membership card given him when he pays his dues (R. 36). The emblem sells for $1.50 (R. 36). If at any time found guilty of a law infraction, he is removed from membership (R. 37). The emblem is the property of the

lodge (R. 40). Application of proposed associate members are investigated (R. 38). F. B. I. men are members and the Order cooperates with the F. B. I. (R. 38-39). In Grand Rapids F. B. I. men have lectured to the Order, particularly about subversive elements in foreign and alien matters (R. 39). Associate members are not allowed any preferences or discrimination regarding law enforcement (R. 39-40). The National Constitution of the Order sets no limits on the number of associate members, and in one chapter, at Niles, Michigan, there are 13 regular members and about 100 associate members (R. 40-41). This matter is left to the local lodges (R. 41).

The objects and purposes of the organization, it was shown by the constitution which was introduced in evidence, are as follows (R. 46):

> "Section 1. This organization is formed for the purpose of promoting personal and efficient coöperation between the police officers of the cities in these various states to the end that the public may be better served in the consideration of law and law enforcement.
>
> Section 2. Advancing social, charitable and educational undertakings among police.
>
> Section 3. To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.
>
> Section 4. To promote the advancement of crime prevention and detection.
>
> Section 5. The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.
>
> Section 6. The Fraternal Order of Police stands for justice to humanity and for its rights, safety and development. We believe in the equality of all before the law.

Section 7. We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.

Section 8. The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these States and Nation."

Proposed associate members are chosen via ballot box, all the lodge members present having the right to vote (R. 43-44). No extra charge is made to an associate member for the emblem, but he gets it when he pays his membership fee (R. 42). These membership fees vary according to the regulations of the local lodges, from $5.00 up to $25.00 in different lodges (R. 42-43). The emblems are numbered (R. 44) and if one is lost or stolen an effort is made to recover it (R. 44). There is no distribution among members of membership rolls—they are only in the records of the lodge (R. 44). It is the desire of the Order that the associate members display this emblem (R. 44-45).

3. On February 2, 1942, the trial court rendered its opinion against plaintiffs (R. 45-51) and on February 20, 1942, a decree was entered dismissing the bill of complaint (R. 52-53).

4. Thereafter, February 21, 1942, a notice of appeal (R. 53-55) to the Supreme Court of the State of Michigan was filed, and the matter there came on for hearing on January 13, 1943, and was submitted on briefs filed in behalf of both parties, and oral arguments in behalf of defendants (R. 57). Whereupon, upon June 30, 1943, the Supreme Court of the State of Michigan rendered its opinion (R. 67-78) and entered its order sustaining the decision below (R. 58).

5. There after, plaintiffs, on July 28, 1943, filed in the Supreme Court for the State of Michigan an application

for rehearing (R. 59-65), which was denied September 7, 1943 (R. 66-67).

III. This court has jurisdiction to issue a writ of certiorari to the Supreme Court of the State of Michigan, for the following reasons:

1. Under the terms of the amendment to the Judicial Code, being the Act of February 13, 1925, Chapter 229, 43 Stat. 936, by Section 237 (b) "it shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or found by the highest court of the State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the constitution."

The manner of raising the points will be set forth hereinafter, but it was urged on behalf of plaintiffs, these petitioners, throughout the proceedings, that the threat of defendants to discharge police officers of the City of Lansing whose rank was above that of sergeant, if they became members of the Fraternal Order of Police, was a threat to infringe, violate, or deny a "title, right, privilege, or immunity" under the freedom of speech and right of assembly clauses of the First Amendment to the Constitution, and also the due process and equal protection clauses of the Fourteenth Amendment. It is charged in the amendment to the bill of complaint (R. 5-6) that the resolution adopted by the defendants and threat of action pursuant thereto are "arbitrary and unreasonable and constitute an abuse of defendants' official discretion, and an infringement of plaintiffs' legal rights—."

2. As to jurisdictional time, the determination of the Supreme Court of the State of Michigan occurred June

30, 1943, and rehearing was denied September 7, 1943. Under the terms of the aforesaid Act of February 13, 1925, Section 8 (a) a petition for writ of certiorari may be filed within three months of final determination, which time may be extended by this court for good cause shown. Such time was extended on petition filed in behalf of petitioners by order entered by this court December 2, 1943, up to and including February 5, 1944.

IV. The questions presented to this court and the manner of their raising is as follows:

1. Paragraph 10 (R. 9-10) of the bill of complaint filed in behalf of plaintiffs is as follows:

> "Your plaintiff further shows by this means of indirect threat as follows:
>
> > 'Any person who disobeys such order will be called before said commission and is subject to dismissal or other action that said commission may see fit to take in the form of punishment.'
>
> This has acted as an indirect threat against members and superior officers of said organization, and contrary to the provisions of the First Amendment to the Constitution of the United States, reading as follows:
>
> > 'Congress shall make no law * * * abridging the freedom of speech * * * or the right of the people peaceably to assemble * * *.'
>
> Your plaintiff further shows that said unlawful action of said defendants further infringes upon the rights of plaintiffs and their members under the following provisions of the Constitution of the United States, to-wit: Section 1 of the 14th Amendment, which reads in part as follows:

'No state shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the eqaul protection of the laws.'

Your plaintiff further shows that the foregoing action of said defendants is a further infringement of the rights of said plaintiffs and their members under Section 2, Article 2 (Bill of Rights) of the Constitution of the State of Michigan, reading as follows:

'The people have the right to assemble together in a peaceable manner, to consult for their common good * * *.' ''

2. Paragraph 12 of said bill (R. 11) is as follows:

"Plaintiffs further show that they have no adequate remedy at law to restrain the encroachment upon their constitutional rights, and that if said order is not rescinded or restrained from enforcement, that the plaintiffs will suffer irreparable injury, not only to the Lansing City Lodge but to the Fraternal Police Organization in its fraternal, social, and charitable work; that said order casts a cloud on the lawful purposes of said plaintiffs' organization, creates a doubt in the public minds as to its lawful purposes and objectives for all of which said grievances the plaintiffs have no adequate remedy at law."

3. The amendment to said bill of complaint of December 8, 1941 (R. 5-6) is as follows:

"By inserting a new paragraph at the end of paragraph X to be known as paragraph X-A, to-wit:

The defendants by the aforesaid resolution as set forth in paragraph VIII and the supplementary statement as set forth in paragraph X, i. e., 'Any person who disobeys such order will be called be-

fore said Commission and is subject to dismissal or other action that said Commission may see fit to take in the form of punishment,' which acts as aforesaid are arbitrary and unreasonable and constitute an abuse of defendants' official discretion, and an infringement of plaintiffs' legal rights, for all of which irreparable injuries plaintiffs are without adequate remedy at law.

By inserting in line 19, paragraph XIV, after the semicolon following the word 'organizations' the following: 'also enjoining the defendants from preventing inclusion of associate members in said lodge and subordinate lodge, or either.' "

4. Counsel for plaintiff orally urged in the trial court that denial of relief prayed would be in violation of the constitutional rights of plaintiff as set forth in said bill of complaint (R. 26).

5. In the Supreme Court of the State of Michigan plaintiffs stated the reasons and grounds of appeal as follows (R. 55):

"1. The Court erred in denying plaintiffs' prayer for a permanent injunction.

2. That the Court erred in denying the plaintiffs relief so that the plaintiffs cannot establish Honorary memberships.

3. That the Court erred in denying the plaintiffs affirmative relief.

4. That the Court erred in determining that the charges set forth in plaintiffs' bill of complaint and answers filed thereto, were not sustained by the proof, and in refusing to grant plaintiffs affirmative relief. Such determination is against the preponderance of the evidence and is not sustained by any evidence produced at the trial."

6. The questions thus raised were argued in the said Supreme Court by means of briefs (R. 57), and upon adverse decision, by an application on behalf of plaintiffs for a rehearing (R. 59-65).

7. There were therefore raised in the Supreme Court for the State of Michigan two Federal questions, both decided adversely to plaintiffs, these petitioners, as follows:

(a) That the action taken by the defendants in adopting the resolution in question and their threat to enforce it constitute a threatened invasion of plaintiffs' rights under the Equal Privileges and Immunities Clause of the Fourteenth Amendment to the Constitution, and

(b) The same constituted a threatened invasion of plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution.

8. Other questions were raised under the constitution of the State of Michigan, particularly involving the right of assembly.

V. The reasons relied on for issuance of writ of certiorari are as follows:

1. The Supreme Court of the State of Michigan has decided two Federal questions, as above indicated, not heretofore decided by this Court. While this Court has decided questions which are doubtless of some degree of similarity, the precise question as to whether or not law enforcement officers may organize into a fraternal order for the purposes indicated in this record, despite the objections of those in authority over them, has not been decided by this court. The questions are of importance, for they affect the existence and growth of a National

organization of law enforcement officers, and, of course, on the other hand, tend to fix the line separating acts of law enforcement officers which may be considered strictly private and personal, from those which may be a part of what the officer owes the public.

Wherefore, petitioners pray that this Court by its writ of certiorari require that the Supreme Court of Michigan certify to it for review and determination the final decision of the Supreme Court of the State of Michigan in said cause.

EDWARD N. BARNARD,
Attorney for Plaintiffs and Petitioners,
906 Dime Building,
Detroit 26, Michigan.

BRIEF IN SUPPORT OF PETITION

I.

PRELIMINARY STATEMENT

This brief is filed in support of the foregoing petition for writ of certiorari which prays that such writ be directed to the Supreme Court of the State of Michigan to review the final determination in that court, on June 30, 1943, wherein that court affirmed the decree of the trial court which dismissed plaintiffs' bill of complaint.

Petitioners herein were complainants (termed "plaintiffs" under Michigan Court Rules) in the trial court, and appellants in the Michigan Supreme Court. The decisions and opinion in the Michigan Supreme Court is found in *Fraternal Order of Police v. Lansing Board of Police and Fire Commissioners,* 306 Mich. 68. It occurs also in the printed record filed in this court, pages 67-78.

Opinions of trial courts are not published under the Michigan practice, but the opinion of the trial court occurs in the printed record, pages 45-51.

II.

STATEMENT OF FACTS

Petitioners herein, as plaintiffs, filed their bill of complaint (R. 5-13) in the Circuit Court for the County of Ingham, State of Michigan, November 26, 1941. The bill alleged that plaintiff, the Fraternal Order of Police is a Fraternal organization of persons engaged in police work, whether municipal, county, state, or federal, for the pur-

pose of promoting better fellowship, to encourage education and investigation and better police methods, and for the mutual protection and relief of police officers and their families.

Plaintiff Joseph Johnson Lodge, No. 102, is a subordinate lodge of the plaintiff Fraternal Order of Police, which latter was the State Lodge. Joseph Johnson Lodge was located in the City of Lansing in the County of Ingham. Both plaintiffs are non-profit corporations. There are twelve subordinate lodges in Michigan, in twenty-four cities.

The bill alleges the purposes of the state lodge as found in the preamble of the constitution as follows:

> "We, the members of the various Police Departments of this State (meaning the State of Michigan) convinced that it is to the best interests of our members, hereby unite under the name of the Fraternal Order of Police of Michigan, and believing that intelligence, industry and normal work are the true standards of greatness, do hereby pledge ourselves to use all honorable means to promote sociability and fraternity among the members of this Order."

Defendants were the Lansing City Police and Fire Commission and had, under the provisions of the Lansing City Charter, powers of supervision and control over the Police Department of that City.

The bill charges that on August 13th, 1941, defendants adopted the following resolution:

> "No superior officer of the Lansing Police Department shall be a member of the Fraternal Order of Police; further the Lansing Lodge shall confine its members to the Lansing Police Department and shall have no associate or honorary members."

It is further alleged that attempts were made on behalf of plaintiffs to procure revocation of this resolution, which failed, but that on the contrary, defendants threatened to discipline any members of the Police Department above the rank of sergeant who became or remained a member of the Order, either by discharge or other means.

On this showing, on February 21, 1942, the trial court rendered its opinion (R. 45-51), wherein it decided that the bill should be dismissed, and entered its decree accordingly February 20, 1942 (R. 52-53). A notice of appeal to the Supreme Court for the State of Michigan was duly filed (R. 63-65) in which court briefs were submitted on both sides and an oral argument had in behalf of defendants (R. 57). The reasons and grounds of appeal in that court as set forth in the record were as follows (R. 559):

> "1. The Court erred in denying plaintiffs' prayer for a permanent injunction.
>
> 2. That the Court erred in denying the plaintiffs relief so that the plaintiffs cannot establish Honorary memberships.
>
> 3. That the Court erred in denying the plaintiffs affirmative relief.
>
> 4. That the Court erred in determining that the charges set forth in plaintiffs' bill of complaint and answers filed thereto, were not sustained by the proof, and in refusing to grant plaintiffs affirmative relief. Such determination is against the preponderance of the evidence and is not sustained by any evidence produced at the trial."

The Supreme Court of Michigan rendered its opinion (R. 67-78), June 30, 1943, affirming the decision below and entered its order accordingly (R. 58). It is of this determination that a review is sought in this Court.

A motion for rehearing was filed in the Supreme Court of the State of Michigan on July 28, 1943 (R. 59-65) which was denied September 7, 1943 (R. 66-67). December 2, 1943, this Court by its order based on a petition filed on behalf of plaintiffs extended the time in which a petition for writ of certiorari might be filed up to and including February 5, 1944.

The bill charges, together with violations of certain provisions of the State Constitution, that this constitutes a threat to violate their rights under the Due Process and Equal Protection of the Laws clauses of the Fourteenth Amendment to the Constitution (R. 5-6, 9, 10, 11). By an amendment to the bill the act of defendants is designated as "arbitrary, and unreasonable" (R. 5-6). These contentions were orally argued in the trial court (R. 26).

The bill prays for injunctive relief, both in final decree and during the pendency of the suit.

An order to show cause (R. 14-15) as to why an injunction *pendente lite* should not be issued came on for hearing December 18, 1941. At this time, by consent of counsel (R. 27) the cause was heard on its merits. One witness was sworn for plaintiffs, and testified, and no witnesses were sworn on behalf of defendants.

The testimony showed that the Fraternal Order of Police is a National organization with head offices at Pittsburgh (R. 27-28) and with a Michigan State Charter for the State Lodge. Petitioner Joseph Johnson Lodge was a lodge subordinate to the State Lodge, located at Lansing (R. 28). The membership of the Order is made up of all regularly employed law enforcement officers, city, county, state or federal (R. 34). There are F. B. I. members (R. 34) and the F. B. I. cooperates with the Order (R. 38-39).

In Grand Rapids F. B. I. men have lectured to the Order on matters pertaining to alien and subversive activities (R. 39). Its purposes and objects, as stated in its constitution which was admitted into evidence, are as follows (R. 48):

> "Section 1. This organization is formed for the purpose of promoting personal and efficient coöperation between the police officers of the cities in these various states to the end that the public may be better served in the consideration of law and law enforcement.
>
> Section 2. Advancing social, charitable and educational undertakings among police.
>
> Section 3. To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.
>
> Section 4. To promote the advancement of crime prevention and detection.
>
> Section 5. The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.
>
> Section 6. The Fraternal Order of Police stands for justice to humanity and for its rights, safety and development. We believe in the equality of all before the law.
>
> Section 7. We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.
>
> Section 8. The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these States and Nation."

The Order functions in many ways along the line of law enforcement as for example, to combat child delinquency, and has also charitable activities (R. 28-29).

The witness related an instance of the activities of the Order in Grand Rapids, Michigan. There the police found an area of the City populated by negroes, where the annual arrests for juvenile delinquency were abnormally high in number, amounting to more than 225 (R. 29). The Local Lodge, in conjunction with associate members and the Chief of Police, who was a member, set up a "Young Commonwealth." The officers devoted their time and labor and a building was erected. There was equipment of a recreational nature for both girls and boys. A partially disabled police officer was placed in charge. In one year the arrests in the particular area were reduced to three (R. 29-30).

Other instances of somewhat similar activity were related of the City of Jackson, Michigan (F. 30) and Cleveland, Ohio (R. 31).

The Order has associate members. The National Chapter sets no limits on their number, but this is left to the Local Chapters, and in one chapter at the little city of Niles, Michigan, there are thirteen regular members and one hundred associate members (R. 40-41). Associate members are selected from citizens of good standing who desire to cooperate with the police who file an application recommended by three members (R. 34-35). These petitions are investigated. The associate members are elected by the whole lodge (R. 34-35) via ballot box, all the members present having a vote (R. 43-44). An associate member is automatically dropped from membership upon conviction of any law infraction (R. 37).

Associate members pay a membership fee ranging from $5.00 to $25.00, depending upon the local lodge (R. 42-43). When this is paid he gets a membership card (R. 36) and a small emblem which he may carry on the license plate

of his automobile (R. 35-36). The Order desires that he display this emblem (R. 44-45).

No extra charge is made for the emblem (R. 42) though it sells for $1.50 (R. 36). Each emblem is numbered (R. 44), it remains the property of the lodge (R. 40) and if one is lost or stolen an effort is made to recover it (R. 44).

No discrimination is made in law enforcement in favor of associate members—in fact more is expected of them in that regard than of citizens who are not members (R. 39-40). There is no interchange among lodges of membership rolls—the membership list is found only in the records of the lodge (R. 44).

III.

SPECIFICATION OF ERRORS

Petitioners intend to urge the following errors:

1. That the resolution adopted by defendants August 13, 1943, and their threats to enforce it are arbitrary and unreasonable and constitute a threat to invade plaintiffs' constitutional rights under,

   (a) The Due Process Clause of the Fourteenth Amendment to the Constitution, and

   (b) Equal Protection of the Laws clause of the Fourteenth Amendment to the Constitution.

These questions are raised in the bill of complaint, were orally argued in the trial court, and presented to the Supreme Court of the State of Michigan in the reasons and grounds of appeal, or indicated by the statement of facts above.

IV.

GROUNDS OF JURISDICTION

1. It need not be argued, we think, that the question of whether or not plaintiffs' rights under the Due Process Clause and the Equal Protection of the Laws clause of the Fourteenth Amendment are Federal questions. For the convenience of the court Section 1 of that amendment is as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. As alleged in the petition, since this case presents questions "where any title, right, privilege or immunity is specifically claimed—under the Constitution," jurisdiction is conferred on this court by the amendment to the Judicial Code, the act of February, 1925, Chapter 229, 43 Sta. 936, Sec. 237 (b):

> "It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any State

on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

3. As to jurisdictional time for filing the petition, under the terms of the aforesaid act of February 13, 1925, Sec. 8 (a) a petition for writ of certiorari to the highest court of any State may be filed within three months of final determination in that court. That court entered its order affirming the decree of the trial court June 30, 1943. An application for rehearing was denied September 7, 1943.

Prior to the expiration of three months period after denial of the motion for rehearing, these petitioners filed in this court a petition to extend the time. An order thereon was entered December 2, 1943, extending the time to and including February 5, 1944, and a copy of this order is attached to the petition. Such extension of time is authorized by Section 8 (a) of the act of February 13, 1925, aforesaid.

In this situation it seems clear that this court has jurisdiction to issue the writ prayed.

V.

BRIEF OF ARGUMENT

1. The resolution of August 13, 1941, adopted by defendants, forbids two classes of members of Fraternal Order of Police, (1) Associate members, and (2) Police Officers over the rank of sergeant. Membership of Police Officers below the rank of sergeant is permitted. There is no reasonable basis for such classification, therefore the threat to enforce the resolution is a denial of equal protection of the laws as guaranteed by Section 1 of the 14th Amendment.

2. The right to organize and solicit members in, and to become members of, Fraternal Order of Police, and to remain so, are rights protected by the Due Process clause of the 14th Amendment. Plaintiffs cannot be deprived of these rights without due process of law. The resolution adopted by defendants on August 13, 1941, is unreasonable, and the resulting infringement upon the rights of plaintiff is contrary to due process of law.

VI.

ARGUMENT

A. THE RESOLUTION ADOPTED AUGUST 13, 1941 BY DEFENDANTS IS ARBITRARY AND UNREASONABLE.

The resolution, if enforced, would do two things: (1) It would prohibit any associate memberships in the Fraternal Order of Police, and (2) it would prohibit membership of any Police Officer above the rank of sergeant. The penalty inflicted for its violation can be dismissal or other form of disciplinary action.

The effect is to outlaw such memberships, thus impeding solicitation of such members by those who are already members of the Order and preventing retention of membership of citizens and police officers.

The right to join any fraternal order, religious order, political organization, educational group, etc., is generally freely conceded. Though there is little mention of constitutional provisions in the opinion of the Michigan Supreme Court, these rights stem from the constitution. The obvious reason assigned by those who support the resolution adopted by defendants in their attempts to sustain it is that the prohibited memberships tend to be in opposition to the duties of the office of policeman. If this contention is not sustained in fact, then the resolution is arbitrary and unreasonable.

The record discloses no facts which would indicate that any membership in the order is contrary to a policeman's duty. The aims and purposes of the organization and its activities are clearly shown. We think it obvious that they are in furtherance of police efforts rather than in opposition thereto.

We venture to say that defendants would offer no objection to any officer of the Police Department of the city of Lansing in becoming members of the Masonic Lodge or of the Knights of Columbus, merely to mention by way of example two well known fraternal orders. But membership in those lodges offers the same opportunities for discrimination in law enforcement as does membership in the Fraternal Order of Police. If, to use the example sug-

gested by counsel for defendants, a police officer of Lansing saw a fellow member of his lodge, whatever lodge it might be, speeding down the highway in excess of the speed limit, there would be the same temptation to overlook the infraction that there would be if membership in Fraternal Order of Police were involved. In other words this resolution constitutes a discrimination against fraternal orders which has no basis in fact or reason.

To impute to police officers the juvenile and reckless attitude of mind that would cause them to discriminate in favor of a fellow lodge member in such respect is of course unwarranted of itself. To do so would be to deprive them of their right to become or remain a member of any fraternal organization. The mere fact that Fraternal Order of Police composed entirely of police officers and associate members does not afford any greater opportunity for discrimination in the matter of law enforcement.

To divide the police officers into two groups, those above the rank of sergeant in one, to which the penalty applies, and those of or below that rank to which they do not apply, is absolutely no basis in reason or fact. It would seem far wiser, if there were anything dangerous about this Order, to permit the higher ranking and older officers who have proven their devotion to duty by such experience that brought them to their rank, to become members, for they could then be aware of the workings of the Order from the inside.

Nor is there any reason for the prohibition of associate membership. The association of members of the community of high standing, whose petitions are investigated and who are chosen by vote of the whole lodge cannot be aimed at creating any organization inimicable to good law enforcement. We think the scheme effective to the promotion of good police work. There is no reason in the prohibition.

The resolution reflects nothing but the over-anxiety of defendants. It harps back to ancient days when, at common law, a labor union was a criminal conspiracy. We have gone far from that day, and we feel that this court will say so, as they have said in effect before. Of course this order is in no sense a labor union, but the analogy is present in this respect.

To say that a police department is a semi-military organization, and reason from that to the conclusion arrived at by the Michigan Supreme Court, begs the question. The members of the Police Department are individuals, and are possessed of all the rights of such. Unless the record shows something in the organization which is in opposition to their duties, the resolution prohibiting their free membership and participation in this Order is unreasonable. The record is utterly devoid of anything of this kind —in fact it shows the exact contrary to be the case.

We think the resolution of defendants arbitrary and unreasonable.

B. THERE IS A THREATENED INVASION OF PLAINTIFFS' RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT TO THE CONSTITUTION.

The resolution being unreasonable, this argument is substantially complete. Deprivation of rights by unreasonable and arbitrary power by the State or any subdivision thereof has always been recognized as a case for the application of the due process clause.

We have devoted no effort to show what authority defendants have under the Lansing City Charter, for we deem that irrelevant. If plaintiffs are deprived of rights under

color of authority of the State or any of its subdivisions, by an unreasonable and arbitrary regulation, the due process clause intervenes its protection.

Home Telephone, etc. Co. v. Los Angeles, 227 U. S. 278, 33 Sup. Ct. 312, 57 Law Ed. 510.

A case more in point on the facts is *People v. City of Chicago,* 199 Ill. App. 362. In that case the Board of Education of the city of Chicago had adopted a rule prohibiting membership of teachers in a labor union under penalty of discharge. The court held that such regulation violated both constitutional clauses here invoked.

The force of this decision is possibly marred somewhat by the fact that it was reversed by a higher court, in 278 Ill. 318, but it was upon totally different grounds. We venture to say that most American courts would now adhere to the rule laid down in the original case.

C. THERE IS A THREATENED INVASION OF PLAINTIFFS' RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

We shall devote no effort to establish accepted principles of elementary constitutional law. We believe it to be accepted that if by a regulation promulgated by any subdivision of the State, penalties are applied to one class and not to another, unless there is some reasonable basis for the discrimination, the regulation is void. We have devoted some effort to show that there is no reasonable basis for the discriminations made by the resolution adopted by defendants. It applies to associate members of Fraternal Order of Police, and to all Lansing police officers above the

rank of sergeant, but to no other classes. There is no basis for this classification as we have indicated above.

See *People v. City of Chicago (supra).*

VII.

CONCLUSION

The line which divides the private rights of a police officer from duties which he owes the public as a police officer calls for definition in this case. It affects the existence and growth of a national organization. The full extent of this organization is not disclosed by the record, but some idea of it may be gained by the facts that are disclosed,—that the national office is in Pittsburgh, that there are 12 chapters in Michigan, in 24 cities of that state, and mention is made of one Ohio chapter in Cleveland. The Michigan Supreme Court has ruled that police officers in becoming or remaining members of such organization as Fraternal Order of Police are on the wrong side of the line. We believe this contrary to principles laid down in the decisions of this court.

We ask that the Writ issue as prayed.

EDWARD N. BARNARD,
Attorneys for Plaintiffs,
906 Dime Building,
Detroit 26, Michigan.

(32)

Office - Supreme Court, U.
MAR 1 1944
CHARLES ELMORE CROP
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United States of America

In the

Supreme Court of the United States

No. 659

THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,
Plaintiffs and Petitioners,

vs.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,
Defendants and Respondents

CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION TO PETITION TO WRIT OF CERTIORARI

PAUL G. EGER,
City Attorney,
Attorney for Defendants and Respondents,
City Hall,
Lansing, Michigan.

WATSON & AMERSON,
Of Counsel,
Lansing, Michigan.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.

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United States of America

In the

Supreme Court of the United States

No.....

THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,
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Defendants and Respondents

CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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The Bill of Complaint was amended so as to state that defendants threaten any person who disobeys the order, in question, with dismissal or other action (R. 5). Such a threat was immediately denied by Mr. Campbell (R. 25).

On page 9 of the Petition the allegation is made, that because of this threat the First Amendment is violated. That such a threat was made, was denied by defendants' answer (R. 23) but no proof of such a threat was ever offered, so therefore any reference thereto should be deleted from the Petition and Bill.

Before discussing whether a Federal question is involved, so as to give this Court jurisdiction, we shall briefly consider Petitioners' claim that the resolution barring superior officers from membership and prohibiting associate members, is arbitrary and unreasonable. Police officers are, of necessity, subject to rigid discipline because they maintain law and order. They must be impartial in the performance of their duty and they cannot be subject to outside influence and under no temptation to yield to the dictation of others. As a general rule Courts hesitate to question the acts of municipal officials unless the invalidity of such acts are clearly established. Where discretion is fixed in an administrative board the Courts will not interfere unless the action taken is unauthorized or in violation of law. No person can claim employment in the Police Department, as a matter of right, but when so employed he is subject to the reasonable rules as made by the governing Board.

The Board has not determined that policemen may not join the Fraternal Order of Police, but that a superior officer may not join, fearing evidently that such association would hinder officers in their duties and render discipline by them ineffective or impossible. It should be borne in mind that no superior officer is here complaining nor is any person objecting that he is being denied associate or honorary membership. As the trial Court said "none of the individuals affected is a party to the action" (R. 48).

The Order permits associate or honorary members at an annual fee of from $5.00 to $25.00 for which they get a membership card and an emblem to be attached to the rear of their automobile. In Niles, Michigan, a lodge of 13 members has 100 associate members (R. 41). Justice Bushnell said "One would be naive, indeed, to assume that such automobile emblem would not carry with it the intimation of special privileges to associate members" (R. 77). Such a possibility is sufficient reason for the adoption of the rule by defendant Board .

Many cases similar to the one at bar have been before the Courts. In *University of Mississippi v. Waugh,* 237 U. S. 589, the Court upheld a statute abolishing fraternities in the State University, and prohibiting membership therein. The Court stated:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions."

The above decision was followed by the Supreme Court of Michigan in *Steele v. Sexton,* 253 Mich. 32, in which the validity of an Act seeking to prohibit the joining of fraternities by high school students was upheld.

In *McCarthy v. Couzens,* 214 Mich. 501, the validity of a decision of the Pension Committee of the Detroit Fire Department was before the Court and it was said:

> "In passing upon the issue of fact before the commission at its hearing of April 20, 1916, its action is not shown to have been fraudulent, arbitrary or capricious. In the absence of such showing the action of the commission must be deemed final and we have no right to interfere by mandamus, no right to substitute our judgment or discretion for that of the commission."

A similar ruling was made in *Kerwin v. Rettie,* 294 Mich. 308, where a resolution of the Port Huron City Commission, reducing a pension, was before the Court.

In the case of *Hutchinson v. Magee,* 278 Penn. State Reports 119, the Director of Public Safety of the City of Pittsburg issued an order that all officers of the Fire Bureau belonging to an association of firemen should sever their connections therefrom and it was held that the discretion of the Director, being based upon a reasonable ground, was final.

In the case of *Carter v. Thompson,* 164 Va. 312, the Director of Public Safety of Norfolk issued an order prohibiting membership in the International Association of Fire Fighters and the order was sustained as being within his discretion. A similar case was before the Texas Court in *McNatt v. Lawther,* 223 S. W. 503, with the same result.

To the same effect are *San Antonio Fire Fighters' Union v. Bell,* (Tex.), 223 S. W. 506; *Fursman v. Chicago,* 278 Ill. 318; *Seattle High School Chap. No. 200 v. Sharples,* 159 Wash. 424, 293 Pac. 994, *Frederick v. Owens,* 35 Ohio Circuit Court Reports 538. In the last three cases, the question as to the validity of actions of Boards of Education in the adoption of resolutions forbidding membership by teachers in labor unions was upheld for the reason that such matters are within the discretionary authority

of the Boards of Education concerned. Consequently, the Courts had no authority to interfere.

Petitioners claim invasion of their rights under the equal protection and due process clause of the 14th Amendment. The grounds for appeal from the trial Court to the Michigan Supreme Court did not raise these constitutional questions (R. 15). The trial Court held there was no constitutional questions involved but, "rather the proposition here involved is solely of departmental discipline" (R. 51). The Supreme Court's opinion did not discuss the constitutional question, apparently considering it was not involved.

Petitioners cite the case of *Home Telephone Company v. Los Angeles,* 227 U. S. 278, 33 Sup. Ct. 312, 57 Law. Ed. 510, which merely held that a Federal Court had jurisdiction of a suit to test the validity of telephone rates fixed by city ordinance, alleged to be confiscatory and repugnant to the due process clause of the 14th Amendment. The case has no bearing on the matter at bar.

Counsel cite, *People v. City of Chicago,* 199 Ill. App. 362, as authority that a rule prohibiting membership of teachers in a labor union was violative of due process. On the appeal found in 278 Ill. 318, the Court said, "It is no infringement upon the constitutional rights of any one for the board to decline to employ him as a teacher in the schools * * *. The decree of the Superior Court is reversed and the cause is remanded, with directions to dissolve the injunction and dismiss the bill." Therefore counsel herein has carelessly read the decision on appeal or is attempting to mislead this Court.

The contention of unconstitutionality has been answered by this Court in the case of *Univ. of Miss. v. Waugh, supra,* wherein it was claimed that the statute prohibiting fraternity membership was void because violative of the

14th Amendment and denied plaintiff the equal protection of law and deprived him of property and property rights without due process. The Court said:

> "The next contention of complainant has various elements. It assails the statute as an obstruction to his pursuit of happiness, a deprivation of his property and property rights and the privileges and immunities guaranteed by the Constitution of the United States. Counsel have considered these elements separately and built upon them elaborate and somewhat fervid arguments, but, after all, they depend upon one proposition; whether the right to attend the University of Mississippi is an absolute or conditional right * * *. This being the power of the legislature under the constitution and laws of the State over its institutions, maintained by public funds, what is urged against its exercise to which the Constitution of the United States gives its sanction and support by its prohibition? * * * It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law and the condition upon which the State of Mississippi offers the complainant free instruction in its University, that while a student there, he renounce affiliation with a society which the State considers inimical to discipline, finds no protection in the 14th Amendment."

In *Steele v. Sexton, supra,* the Michigan Court citing the aforesaid case as authority, held that a statute withholding credits from a high school student, who was a member of a fraternity, did not violate the due process clause of the 14th Amendment.

In *Seattle v. Sharples,* 159 Wash. 424, 293 Pac. 994, a resolution of a School Board that no teacher be employed or continue in employment while a member of a teachers

association was likewise held not to be violative of the 14th Amendment.

To summarize, the action of the Board in resolving that no superior officer of the Lansing Police Department be a member of the Fraternal Order of Police and that the Lansing Lodge have no associate or honorary members, was not arbitrary, was a matter to be determined in the sole discretion of the Board and does not violate any constitutional provisions.

We therefore ask that the application be denied.

Respectfully submitted,

PAUL G. EGER,
City Attorney,
Attorney for Defendants,
City Hall,
Lansing, Michigan.

Office - Supreme Court, U. S.
FILED
MAR 10 1954
CHARLES ELMORE CROPLEY
CLERK

United States of America

In the

Supreme Court of the United States

No. 669

THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,

Plaintiffs and Petitioners,

v.

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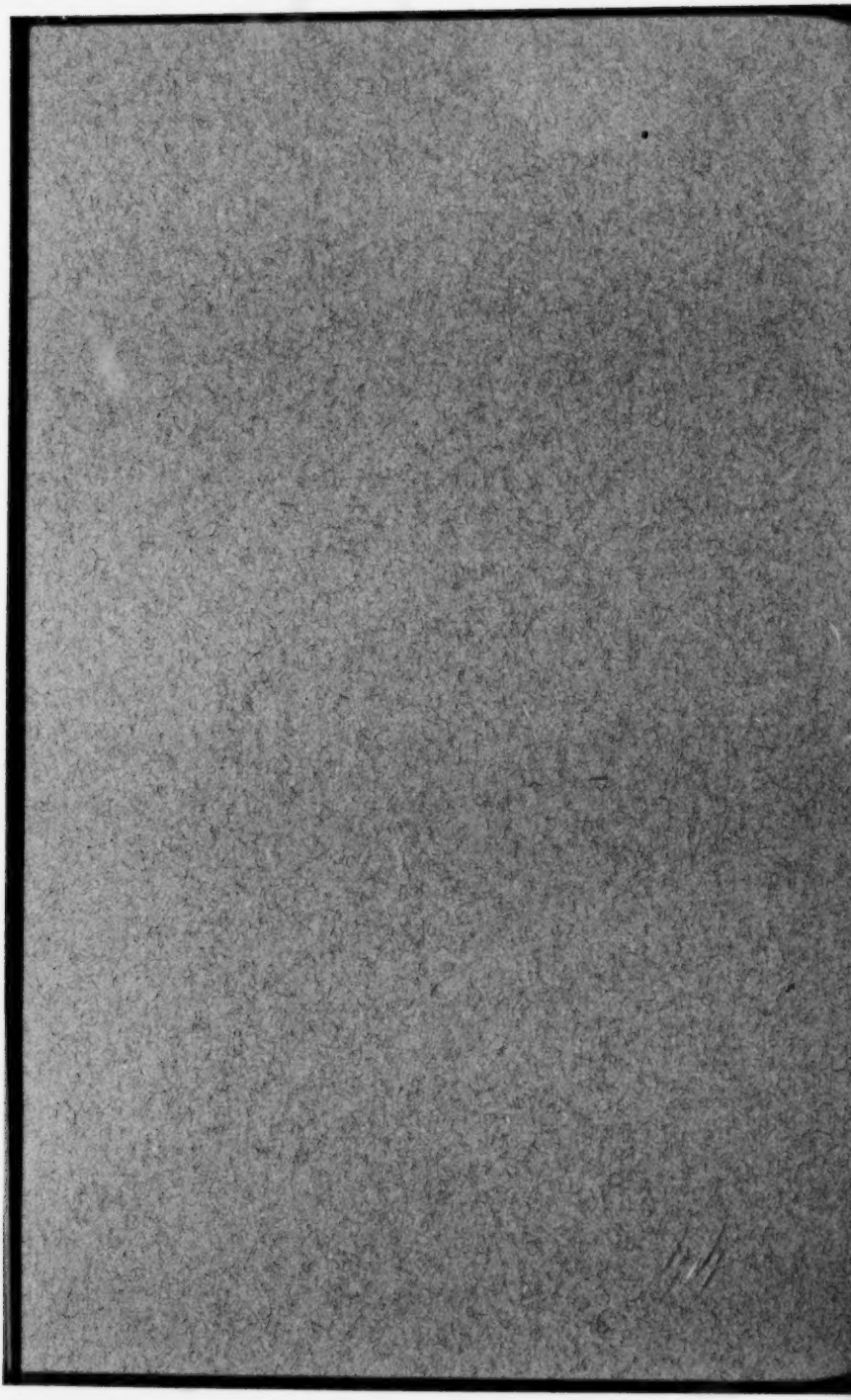
Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

BRIEF OF THE CORPORATION COUNSEL OF THE CITY OF DETROIT AS AMICUS CURIAE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PAUL E. KRAUSE,
Corporation Counsel, City of Detroit,
JOHN H. WITHERSPOON,
Assistant Corporation Counsel,
NATHANIEL H. GOLDSTICK,
Assistant Corporation Counsel,
Amicus Curiae,
311 Police Headquarters Bldg.,
Detroit 26, Michigan.

Ruddock Record Co., Cass Bldg., 447 East Fort St., W., Detroit 26, Mich.



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United States of America

In the

Supreme Court of the United States

No.....

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Plaintiffs and Petitioners,

v.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,

Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

CONSENT TO FILING OF BRIEF AS AMICUS CURIAE

We, the undersigned, being attorneys for all of the parties to the above entitled cause, do hereby consent to the filing of *amicus curiae* briefs in this cause by Paul H. Krause, Corporation Counsel, and John H. Witherspoon

and Nathaniel H. Goldstick, Assistants Corporation Counsel as *amicus curiae.*

Edward N. Barnard,
Attorney for Plaintiff and Petitioner.

Paul G. Eger,
City Attorney, Lansing, Michigan, Attorney for Defendants and Respondents.

Dated: Detroit, Michigan,
March 6, 1944.

United States of America

In the

Supreme Court of the United States

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THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,

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Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

BRIEF OF THE CORPORATION COUNSEL OF THE CITY OF DETROIT AS AMICUS CURIAE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

(Unless otherwise clearly shown by context, figures in parentheses refer to pages of the printed record)

This brief in opposition to the petition for writ of certiorari filed by the petitioner is presented by the Corporation Counsel of the City of Detroit as *amicus curiae*. Written consent has been given by counsel for all the parties, a copy of which is attached hereto.

A similar suit between the Fraternal Order of Police, petitioner herein, and the Detroit Police Department is now pending in the Wayne Circuit Court at Detroit. The City of Detroit is, therefore, vitally interested in the outcome of this litigation.

The Fraternal Order of Police, a non-profit corporation, of Michigan, and the Joseph Johnson Lodge, a subordinate lodge of the Fraternal Order of Police, as plaintiffs, filed a bill of complaint against the Lansing City Police and Fire Commission to restrain the enforcement of a rule adopted by the Commission forbidding any superior officer of the Lansing Police Department from becoming a member of the Fraternal Order of Police; that membership be confined to members of the Lansing Police Department with the exception of superior officers and that the no rank and file officer be permitted to join in the event the local lodge takes into membership so-called associate or honorary members. The superior officers of the Lansing Department were the chief, the captain, four lieutenants and six sergeants (50). None of these superior officers appeared as party plaintiffs. No averments were contained in the bill of complaint alleging any grievance or the deprivation of any right on the part of any of the superior officers. No superior officer appeared as a witness at the trial and there was no showing that any superior officer complained of the rule or that any such superior officer was being deprived of any constitutional rights (50). No rank and file officer appeared either as complainant or as a witness.

The trial judge in his opinion stated:

> "None of the individuals affected is a party to the action" (51).

In upholding the validity of the rule promulgated by the Lansing Board of Police and Fire Commissioners

both the Trial Court and the Michigan Supreme Court held (306 Mich. 68) that neither the plaintiffs nor the individuals affected thereby, had they been parties to the litigation, were deprived of any constitutional rights. The case was decided on the proposition that the Board having control of the Police Force—a quasi military organization —it was authorized to adopt reasonable rules and regulations governing the Police Department.

The Court determined that as long as the members of the Police Force desired to remain in the employment of the City of Lansing as police officers, they were required to surrender some of their presumed private rights and subject themselves to the reasonable rules and regulations of the Police Department. The Court held that the adoption of the Resolution was within the scope of the authority granted to the Board by the Charter of the City of Lansing and that the adoption of the Resolution was neither arbitrary nor unreasonable.

In dismissing the bill of complaint, the Court held:

> "Neither the plaintiffs nor the individuals concerned are deprived of any constitutional right. Observance of the rule is essential to membership in the Police Force. It is analagous to other disciplinary regulations adopted and enforced under the discretionary authority by the Board that the people have created for the management and control of the Police and Fire Departments" (54).

I.

CERTIORARI TO THE UNITED STATES SUPREME COURT DOES NOT LIE BECAUSE PLAINTIFFS HAVE NO INTEREST IN THE SUBJECT MATTER OF THE SUIT

In the plaintiffs' attempt to champion the claimed constitutional rights of superior officers of the Lansing Police Department none of these officers appeared as parties to

the suit, nor as witnesses in the case. Nowhere does it appear that they are asserting any such right or that the plaintiffs are authorized to assert such right for them.

> "Standing to invoke adjudication is lacking where the right sought to be championed is that of third parties * * * where the Supreme Court review of the decision of a state court is sought, the party seeking review 'must show that enforcement of the challenged judgment would deprive it —*not another*—of some right arising under the constitution or laws of the United States properly asserted below.' In order to give the Supreme Court jurisdiction to review the decision of a state court denying an asserted federal right, '*that right must be one of the plaintiff in error and not of a third person only.*' *Robertson & Kirkham's Jurisdiction of the Supreme Court of the United States,* pages 478 and 479."

See also: *Liberty Warehouse Co. v. Burley Tobacco Growers Cooperative Market Association,* 276 U. S. 71, p. 88.

In the case of *Cronin v. City of Denver,* 192 U. S. 108, p. 114, this court held that a saloonkeeper had no right to challenge the validity of the provision of a state law prohibiting the sale of liquor to women. In refusing to recognize the claim of the saloonkeeper, this Court said:

> "What cause of action, then, has plaintiff in error? He is not a female nor delegated to champion any grievance females may have under the ordinance, if they have any."

In *Standard Stock Food Co. v. Wright,* 225 U. S. 540, at page 550, it was stated:

> "* * * one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within

> the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution." (*Southern Ry. v. King,* 217 U. S. 524, 534; See also *Tyler v. The Judges,* 179 U. S. 405; *Turpin v. Lemon,* 187 U. S. 51, 60; *Hooker v. Burr,* 194 U. S. 415; *Hatch v. Reardon,* 204 U. S. 152, 160; *Collins v. Texas,* 223 U. S. 288, 295.)

In *Cusack v. City of Chicago,* 242 U. S. 526, at page 530, it was held:

> "He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property."

See also: *Hatch v. Reardon,* 204 U. S. 152, p. 160.

In the case of *San Antonio Fire Fighters' Local Union No. 84 v. Bell, et al.,* 223 S. W. 506 (Texas), the plaintiff, a local voluntary Union Labor organization instituted suit against the Mayor, Fire Chief and other City officials, alleging a conspiracy to break up the Union and intimidate members of the Fire Department belonging to the Union by threatening to discharge them unless they withdrew their membership. An injunction was sought to prevent the discharge of members of the Union. While the suit was brought in the name of the Union, the bill filed alleged that the suit was brought not only for the Union but in behalf of each member thereof. The defendants filed a demurrer which was sustained and the bill was dismissed. The Union appealed, the Appellate Court in sustaining the demurrer held as follows:

> "The main object in permitting joint-stock companies or associations to sue was to prevent the necessity of making the individual stockholders or

members thereof as parties to the suit. As in suits by partnerships, the individual rights of the members cannot be maintained and individual wrongs redressed through a suit by the association. It must be a joint right that is to be enforced, or a joint wrong that is to be redressed. Appellant sues to redress a wrong to the association which it claims arose by an anticipated wrong which may be inflicted on its members severally. It pleads that an attack will be made upon it, if its members should be dismissed from the service of the city by the mayor and commissioners.

Article 6149 is based upon convenience and economy, in permitting all the members of a joint-stock company or association to sue, in the name of the association in order to conserve a joint right, or redress a joint wrong, and it was never intended that the name of the association could be used to ascertain and protect the several rights of the members or redress their several wrongs. *Mayhew Co. v. Valley Wells Ass'n.*, 216 S. W. 225.

We are of the opinion, not only that appellant could not sustain a suit shown to be a several and not a joint one, but also that suits by or against a joint-stock company or association can be sustained only as to property rights in which the membership is jointly interested. The very language of the statute seems to imply that the company or association can sue or be sued only about property rights, for it limits the right to those companies 'doing business in the state,' showing an intent to confine such suits to matters of business. There is no allegation in the petition of any property right of the association that was threatened by the mayor and commissioners, but from the petition it clearly appears that no right is threatened, except that of the individual members, in which the company or association had no property right whatever. No contract between the association and the city of San Antonio was being threatened or invaded. It

had no contract with the city, and no right belonging to it was about to be assailed. It had no right upon which to base an application for an injunction."

* * * * *

"The petition fails to show that any rights have been invaded, held by appellant, or any wrongs committed against it, and it has no authority to act as guardian for its membership and make their demands its demands. Each of them, as an American citizen, will find the courts open, and the judiciary ready to protect him against any invasion of his rights, whether personal or property rights."

The Bill praying for injunctive relief is filed by a non-profit organization that has no contractual or other relationship with the City of Lansing. The actions of the Lansing Police and Fire Commission, even if set in motion against the officers of the department, could in no way inflict property injury upon the Fraternal Order of Police. The organization's right to freedom of assemblage and due process has not been infringed upon.

Clearly if the plaintiffs have no cause for redress in this case they cannot question the constitutionality of the resolution enacted by the Police and Fire Commission of Lansing.

II.

CERTIORARI TO THE UNITED STATES SUPREME COURT WILL NOT LIE BECAUSE THE DECREE OF THE STATE COURT IS BASED UPON NON-FEDERAL GROUNDS ADEQUATE TO SUPPORT THE SAME

"Where the decision of the State court is deemed to rest upon a non-federal ground and independently and adequately supports the State court judg-

ment, the Supreme Court will not exercise jurisdiction to review, notwithstanding the raising of federal questions upon the State court record or the decisions of those questions by the State Court."

Robertson and Kirkham's Jurisdiction of the Supreme Court of the United States, p. 149.

"In order to authorize a review by the United States Supreme Court of a decision of a State court, it is usually necessary that a federal question shall have been decided by the State court or at least necessarily involved in the judgment. Hence a judgment resting on grounds adequate to sustain it, independent of any federal question, is not reviewable * * *."

36 Corpus Juris, Sec. p. 150.

Fox Film Corp. v. Mueller, 296 U. S. 207, 210, 211.

McGoldrick v. Gulf Oil Corp., 309 U. S. 2.

The resolution passed by the Lansing City Police and Fire Commission made no attempt to regulate the affairs and conduct of the Fraternal Order of Police. The resolution established a rule for the police officers employed by the City of Lansing. Violation of the rule subjected violators to disciplinary action by the Commission. No violation of the regulation was shown to have taken place, nor was there any showing that the Commission had taken any action against any officers who had violated or contemplated the violation of such rule. No officer had been dismissed nor had any other disciplinary action been taken against any officer for violation of the rule. The Bill merely alleges that a threat existed that police officers would be removed because of a violation of the rule. The Bill in this case was filed by the Fraternal Order of Police and the Joseph Johnson Lodge No. 102 of the City

of Lansing, Michigan, a subordinate Lodge of the Fraternal Order of Police. It was not filed by any police officer who might be faced with a possible ouster for violation of the rule. Even if the action were brought in the name of a superior police officer of the Lansing Police Department, the allegation of a mere threat, without any other action on the part of the Lansing Police and Fire Commission would be insufficient to warrant equitable interference.

San Antonio Fire Fighters v. Bell, supra.

The decision of the Michigan Supreme Court and of the Trial Judge expressly held that there was no constitutional question involved. The regulations of the Lansing Commission did not deprive the members of the Lansing Police Department from joining the Fraternal Order of Police,—this they could do to their hearts content. What the Lansing Commission did do was to promulgate a rule which prohibited superior officers from joining the Fraternal Order of Police and retaining their status as superior officers of the Lansing Police Department. The Lansing Commission, in the exercise of its authority to control the police force, has taken the position that their employees, to-wit: the superior officers of the Police Department, in order to remain superior officers, cannot join the Fraternal Order of Police and that the rank and file cannot belong to the organization if associate or honorary members are permitted to join. As individuals the men have the right to join the organization. If they wish to continue as police officers they are limited in that right by the rules and regulations promulgated by their employers, the City of Lansing, through its Commission.

Rules and regulations of this type have been upheld in many cases:

Hutchinson, Captain Fire Bureau of City of Pittsburgh v. McGee, Mayor, 278 Pa. 119; 122 Atl. 234;

Brownell v. Russell, 57 Atl. 103 (Vt.);

Coane v. Geary, 298 Ill. App. 199; 18 N. E. 2d 719;

Frederick v. Owens, 35 Ohio Circuit Decisions 538;

San Antonio Fire Fighters Local Union 84 v. Bell, supra.

The Supreme Court of Michigan not only pointed out that the Lansing Police & Fire Commission had the express authority under the Charter of the City of Lansing to pass the regulation in question, and declared that the court was without authority to interfere with the administrative functions of the Commission, the Supreme Court went further, it pointed out that there was substantial basis for the regulation adopted by the Lansing Commission and determined that there was ample justification for the adoption of the rule by the Commission. The Supreme Court stated:

> "The constitution and by-laws of plaintiff's national, state and local organizations which were received in evidence provide in effect that citizens may become associate members upon payment of dues of not less than $5 per year, and such associate members will be furnished 'a membership card' and car 'emblem.' One would be naive indeed, to assume that such automobile emblem did not carry with it the intimation of special privileges to associate members. This of itself is enough to require the determination that the existence of plaintiff organization within the law-enforcement body of a municipality is contrary to public policy."

The Lansing City Police and Fire Commission charged with control of the Police Department deemed inimical to the best interests of the City of Lansing the operation of a Lodge of the Fraternal Order of Police, that took in superior officers of the force as members and also extended membership to outsiders as honorary or associate members. This was not an unsual or strained conclusion. The rule limiting or restricting the right of a police officer to join an organization, the membership of which might interfere or conflict with his duties as a police officer and his loyalty to the people he serves, has long represented the policy of well regulated police departments. It is a rule that forms an integral part of the contract of employment of the officer. He knows when he joins the force he may not be able to join an organization with secrets and rituals, with national officers and organizers demanding obedience to orders and with outsiders as honorary and associate members. The people of the community have a right to the enforcement of this rule. No police officer who wants to retain his employment has a right to assert that his constitutional privileges are abridged if the people who employ him insist that he must obey the reasonable rules and regulations of the Police Department. If the rule is not to his liking he is free to seek employment elsewhere and become a joiner of any organization willing to receive him.

No federal questions were involved in the decision of the Supreme Court of Michigan.

It is respectfully submitted that the petition for Certiorari should be denied, first: because the plaintiffs have no such interest that entitles them to the writ, and second: because the decision of the Michigan Supreme Court was based on adequate non-federal grounds which were broad,

independent and tenable and no federal constitutional questions were involved.

Respectfully submitted,

PAUL E. KRAUSE,
Corporation Counsel, City of Detroit,
JOHN H. WITHERSPOON,
Assistant Corporation Counsel,
NATHANIEL H. GOLDSTICK,
Assistant Corporation Counsel,
Amicus Curiae,
311 Police Headquarters Bldg.,
Detroit, Michigan.